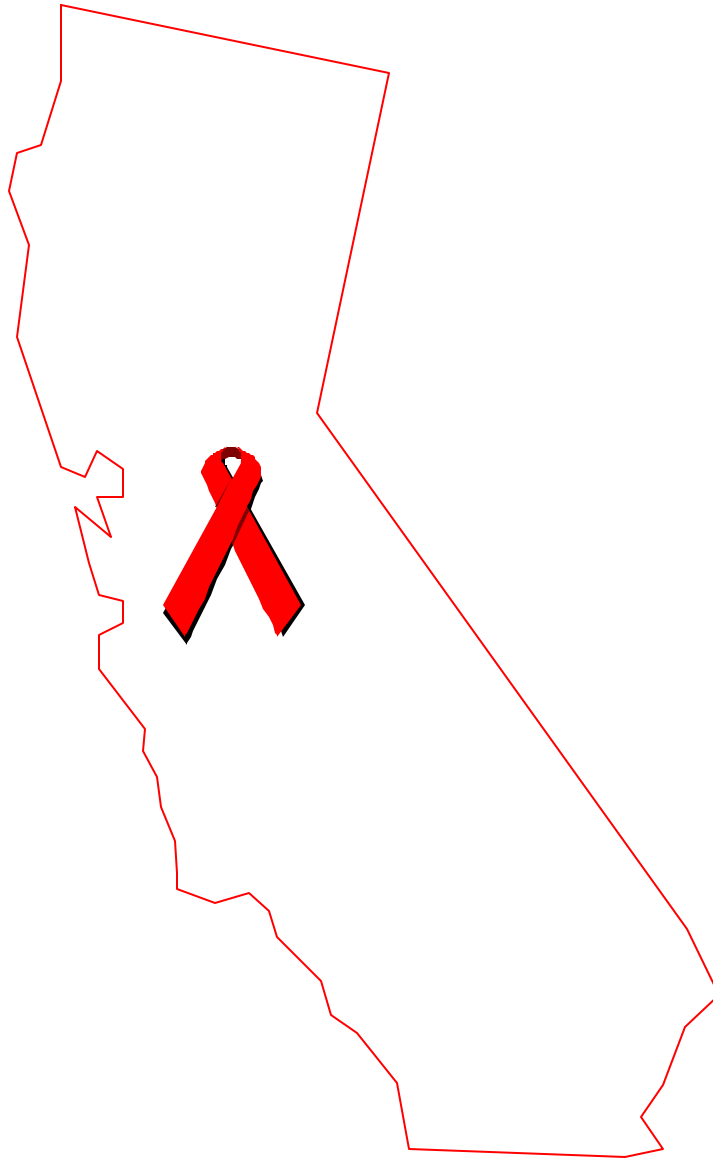


# **A BRIEF GUIDE TO CALIFORNIA'S HIV/AIDS LAWS - 1999**



**California Department of Health Services**  
**Office of AIDS**  
Released April 2000



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## INTRODUCTION

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This annual guide to selected Human Immunodeficiency Virus and Acquired Immunodeficiency Syndrome (HIV/AIDS) California laws is provided for you by the California Department of Health Services, Office of AIDS and covers laws through the 1999 legislative session. As designated by California Health and Safety Code Section 100119, the Office of AIDS is the lead agency responsible for coordinating State programs, services, and activities relating to HIV/AIDS. Comprised of three Branches, (HIV Care, HIV/AIDS Epidemiology, and HIV Education and Prevention Services), the Office of AIDS is committed to assess, prevent, and interrupt the transmission of HIV, and provide for the needs of HIV-infected Californians.

*A Brief Guide to California's HIV/AIDS Laws 1999*, focuses on issues and questions frequently raised by individuals concerning HIV/AIDS testing, exposure, confidentiality, education, and discrimination. The document was designed to introduce the reader, by topic, to California laws (codes and regulations) that pertain to HIV/AIDS. It is not intended to address all aspects of HIV/AIDS law or offer legal advice, nor does it provide the full text of any referenced law, or reference court decisions that may interpret the laws. Although current at the time of this publication, legislative and/or judicial acts may potentially be amended, deleted, or added to California codes and regulations at any time.

For more detailed information on HIV/AIDS, California codes and regulations and relevant judicial case reports should be consulted directly. Copies of all California codes, the California Code of Regulations, and judicial decisions are accessible at any law library and through most public libraries. Current Senate and Assembly bill information as well as California laws (codes) are accessible through the World Wide Web on the Official California Legislative Information Web site <http://www.leginfo.ca.gov>. The California Code of Regulations are accessible at <http://www.calregs.com>.

Sections of the California Code of Regulations are frequently referred to by the number of the Assembly Bill (AB), Senate Bill (SB), or ballot proposition that led to their enactment. For example, Health and Safety Code Section 100119 might also be referred to as AB 3102, its bill of origin. In *A Brief Guide to California's HIV/AIDS Laws 1999*, only code sections are used to reference laws.

HIV or AIDS is mentioned in statutes contained in the California Business and Professions, Civil, Education, Family, Government, Health and Safety, Insurance, Labor, Penal, Vehicle, and Welfare and Institutions Codes, as well as in the California Code of Regulations. A list of these HIV/AIDS-related code sections and regulations, and their corresponding subject matter may be found in Appendix A.

In 1999, two Senate and four Assembly bills that mention HIV or AIDS were signed into law. Not all of these laws are discussed within the text of this document. However, a complete list of the bills signed into law in 1999 that mention HIV/AIDS, as well as three that may affect HIV-positive individuals, are listed in Appendix B. Appendix C provides a glossary of selected terms used in this reference guide.

*A Brief Guide to California's HIV/AIDS Laws 1999* is within the public domain and as such, may be reproduced at the reader's expense, without written authorization or risk of penalty. A copy of the complete document may be obtained through the Internet by accessing the California Department of Health Services, Office of AIDS Web site at <http://www.dhs.ca.gov/AIDS/>. A limited number of printed copies may be available by contacting the California Department of Health Services, Office of AIDS, P.O. Box 942732, Sacramento, CA 94234-7320, (916) 445-0553.

## **VOLUNTARY HIV TESTING**

For most individuals outside the criminal justice system, the decision to test for HIV infection is a voluntary one. In some situations, such as for employment or health insurance, mandatory testing is specifically prohibited. In other situations, such as for pregnant women, testing is voluntary but HIV information and/or testing must be offered. This section discusses those situations, the types of voluntary testing available, and the laws governing consent for testing and disclosure of test results.

### **PROHIBITIONS AGAINST MANDATORY TESTING**

#### **Employment**

Health and Safety Code Section 120980 prohibits the use of HIV testing to determine suitability for employment.

#### **Insurance**

Health and Safety Code Section 120980 also prohibits insurance providers from using an HIV test as a prerequisite to obtaining insurance. Health and Safety Code Section 1389.1 requires that health insurance applications carry a prominently displayed notice that California law prohibits health care service plans from requiring or using an HIV test as a condition of obtaining coverage. Insurance Code Sections 799-799.10 allow an exception for life and disability income insurance. See “HIV/AIDS and Insurance” for greater detail of these Sections.

### **MANDATORY OFFERING OF HIV/AIDS INFORMATION AND/OR TESTING**

#### **Marriage**

An HIV test is not required prior to obtaining a marriage license in California. However, Family Code Section 358 requires that information concerning AIDS and the availability of HIV testing be distributed to marriage license applicants.

#### **Pregnant Women**

Health and Safety Code Section 125107 requires prenatal care providers to offer HIV information and counseling to every pregnant patient for whose prenatal care the provider has primary responsibility. In addition, the provider must offer an HIV test to every pregnant patient, unless the patient already has a documented positive test result or AIDS. The provider must document in the patient’s medical record that both counseling and testing have been offered.

### **ANONYMOUS TESTING**

In anonymous HIV testing, the identity of the test subject is not linked to the test result. In accordance with Health and Safety Code Sections 120885-120895, anonymous testing is available at Alternative Test Sites (ATS) administered by county health departments. HIV tests at these sites are free and test site counselors do not collect any identifying information (e.g. name, social security number, driver’s license, etc.) from test subjects. Instead, test subjects receive a unique identifier (number) that corresponds to their tissue sample and test result. Health and Safety Code Section 120895 requires that, at a minimum, individuals testing at an ATS be informed about the validity and accuracy of the antibody test before it is performed.

Anonymous testing is also available in some clinical settings other than at ATS, such as some family planning and sexually transmitted disease clinics. In addition, anonymous testing is now available through

the use of an in-home collection kit. Using the kit, an individual draws a blood sample, submits it by mail, and receives test results by phone. As with the ATS, the in-home collection kit links the blood sample to the individual using a number rather than a name or any other personal identifier.

## **CONFIDENTIAL TESTING**

In contrast to anonymous testing, confidential testing links the test subject's identity to the test result. However, the confidentiality of test results is specifically protected by California law, which prohibits unauthorized disclosure (see "Disclosure of Test Results"). Confidential testing is available at State-funded confidential test sites as well as private health care settings. To protect the privacy of individuals taking an HIV test, Health and Safety Code Section 120975 provides that no person shall be compelled in any civil, criminal, administrative, legislative or other proceeding to identify any individual who takes an HIV test.

## **CONSENT REQUIRED FOR TESTING**

### *In General*

Except in the case of a treating physician or surgeon, Health and Safety Code Section 120990 requires written consent for HIV testing. The statute requires a treating physician or surgeon to obtain informed consent for HIV testing. Health and Safety Code Section 120990 requires a specific consent for HIV testing; a general consent for medical care is not sufficient to permit HIV testing.

### *At an Alternative Test Site*

Health and Safety Code Section 120990 does not apply to tests performed at an ATS, tests on a cadaver or donated body or organs, or blood tested anonymously as part of a scientific investigation. As previously noted, Health and Safety Code Section 120895 requires that individuals testing at an ATS be informed about the validity and accuracy of the antibody test before it is performed.

### *Incompetent Persons and Minors*

In the case of an incompetent person, Health and Safety Code Section 121020 authorizes a parent, guardian, conservator, or other person legally authorized to make health care decisions to give written consent for an HIV test. Minors under the age of 12 are considered not competent to give consent. Minors who are wards of the court may receive written consent from the court.

## **DISCLOSURE OF TEST RESULTS**

### *Written Authorization Requirements*

Health and Safety Code Section 120980 requires that persons responsible for the care and treatment of an individual who takes an HIV test obtain written authorization prior to any disclosure of the individual's test results. This statute requires a separate written authorization for each disclosure, and must state to whom the results will be disclosed. Further, the statute provides for a civil penalty of up to \$1,000 for each negligent unauthorized disclosure and \$1,000 to \$5,000 for each willful disclosure. A negligent or willful disclosure that results in economic, bodily, or psychological harm to the test subject is a misdemeanor punishable by imprisonment of up to one year and/or a fine of up to \$10,000.

### *Physician Exceptions to Written Authorization Requirements*

Inclusion of a person's HIV test result in his/her medical record is not considered a disclosure under Health and Safety Code Section 120980. Health and Safety Code Section 120985 permits a physician who orders an HIV test to record the results in the patient's medical record, or otherwise disclose it

without written authorization to the patient's health care providers for the purpose of diagnosis, care, or treatment of that patient. Recording or disclosing test results in accordance with Section 120985 does not authorize further disclosure unless otherwise permitted by law. Providers of health care are to be defined as in Civil Code Section 56.05(d), with the exclusion of group practice pre-paid health care service plans.

#### Partner Notification Exception to Written Authorization Requirements

Health and Safety Code Section 121015 permits (but does not require) a physician or surgeon who has an individual under his or her care to disclose that individual's confirmed positive HIV test result to the local health officer, the individual's spouse, or any person reasonably believed to be the sexual or needle sharing partner of the individual. Such disclosure may be made only for the purpose of diagnosis, care, and treatment of the person notified or to interrupt the chain of HIV transmission. The disclosure must not include any identifying information about the HIV-positive individual.

Prior to disclosing an individual's test result, the physician or surgeon must discuss the results with the patient and offer appropriate emotional and psychological counseling, including information on the risks of transmitting HIV and methods of avoiding those risks. Further, the physician or surgeon must inform the patient of the intent to notify partners and must attempt to obtain the patient's voluntary consent for partner notification. Upon notifying a spouse or partner of an HIV-infected person, the physician or surgeon must refer the spouse or partner for appropriate care, counseling, and follow-up.

County health officers may notify a spouse or partner of an HIV-positive individual but cannot identify the infected individual or the physician making the report. As with physicians and surgeons, county health officers must refer the spouse or partner for appropriate care and follow-up. Upon completion of partner notification efforts, all records regarding the contacted person maintained by the county health officer, including but not limited to identifying information, must be expunged. The county health officer must keep confidential the identity and HIV status of the individual tested as well as the identity of the persons contacted.

#### Other Exceptions to Written Authorization Requirements

Health and Safety Code Section 121010 allows disclosure of an individual's HIV test results without prior authorization to the following:

- the subject of the test or the subject's legal representative, conservator, or other person authorized to consent to the test;
- the test subject's provider of health care (Civil Code Section 56.05) but not a health care service plan;
- an agent or employee of the subject's provider of health care who provides direct care and treatment;
- a provider of health care who procures, processes, distributes, or uses a human body part donated pursuant to the Uniform Anatomical Gift Act; and
- a designated officer of an emergency response employee and from that designated officer to the employee regarding possible exposure to HIV/AIDS.

## **MANDATORY HIV TESTING OUTSIDE THE CRIMINAL JUSTICE SYSTEM**

### **PROFESSIONAL BOXERS AND MARTIAL ARTS FIGHTERS**

Business and Professions Code Section 18712 requires that any person applying for a new or renewed license as a professional boxer or professional martial arts fighter shall present evidence that he or she has tested negative for HIV within 30 days of the date of the application. All medical information obtained under this section, including the HIV test result, is confidential. If the State Athletic Commission denies or



revokes a license due to a positive HIV test, the stated cause for denial shall be “medical reasons.” An applicant or licensee may request a closed hearing to appeal the commission’s decision.

## **MANDATORY HIV TESTING WITHIN THE CRIMINAL JUSTICE SYSTEM**

Under some circumstances, individuals accused or convicted of certain crimes may be required to take an HIV test and the results may be disclosed to the crime victim and used to enhance the penalty for certain subsequent crimes. In addition, individuals confined in correctional settings may also be required to take an HIV test under certain circumstances and the test results disclosed to specified persons. These testing and disclosure provisions are exceptions to the general prohibitions against HIV testing and disclosure without consent (see “Voluntary HIV Testing”).

### **CERTAIN SEX OFFENSES OTHER THAN PROSTITUTION**

Penal Code Section 1202.1 requires persons convicted of certain sex offenses and minors adjudged wards of the court or placed on probation for such offenses, to submit to an HIV test. These offenses include rape (including statutory and spousal rape), and unlawful sodomy or oral copulation. In addition, testing is required for individuals convicted of lewd or lascivious acts with a child if the court finds there is probable cause to believe that a bodily fluid capable of transmitting HIV was transferred from the defendant to the victim. The clerk of the court must convey the test results to the Department of Justice and the local health officer. The prosecutor must advise the victim of the right to receive the test results and refer the victim to the local health officer for counseling. The local health officer must release the test results to the crime victim if the victim so requests. The victim, in turn, may disclose the test results as he or she deems necessary to protect his or her health and safety, or the health and safety of his or her family or sexual partner. The local health officer must also disclose the test results to the test subject and provide appropriate counseling. The Department of Justice must disclose the test results of any previously convicted sex offender upon the request of the prosecutor or defense attorney in connection with any subsequent investigation or prosecution of the test subject for prostitution or certain sex crimes.

Penal Code Section 12022.85 provides for a three-year sentence enhancement for a conviction of rape (including statutory and spousal rape), or unlawful sodomy or oral copulation, if the defendant knew that he or she was HIV positive at the time of the commission of the offense. An HIV test result obtained pursuant to Penal Code Section 1202.1 or Penal Code Section 1202.6 may be used to prove this knowledge.

In contrast to Penal Code 1202.1 which requires HIV testing of persons *convicted* of certain sex crimes, Health and Safety Code Section 121055 permits testing of persons, including minors, *charged* with certain sex crimes. These crimes include, but are not limited to rape (including statutory and spousal rape), unlawful sodomy or oral copulation, and lewd or lascivious acts with a child. At the request of the alleged victim, if the court finds probable cause to believe that a possible transfer of a bodily fluid took place between the defendant and the alleged victim during the alleged crime, the court shall order the defendant to submit to an HIV test. The test results must be provided to the defendant, the alleged victim, and if the defendant is incarcerated or detained, to the officer in charge and the chief medical officer of the detention facility. Health and Safety Code Section 121065 forbids the use of the test results as evidence in any criminal proceeding.

### **PROSTITUTION**

Penal Code Section 1202.6 requires that individuals convicted of prostitution complete instruction in the causes and consequences of AIDS and submit to an HIV test. The test results must be disclosed to the

test subject, the court, and the State Department of Health Services (DHS). The court and the DHS must maintain the confidentiality of the report; however, the DHS must furnish copies of the report to a district attorney upon request.

If an individual has a previous conviction for prostitution or any of the sex offenses listed in Penal Code Section 1202.1(c), tested positive for HIV in connection with that conviction, and was informed of the test results, Penal Code Section 647f elevates any subsequent prostitution conviction from a misdemeanor to a felony.

### **ASSAULTS ON PEACE OFFICERS, FIREFIGHTERS, OR EMERGENCY MEDICAL PERSONNEL**

Health and Safety Code Section 121060 allows court-ordered HIV testing of any person charged with interfering with the official duties of a peace officer, firefighter, or emergency medical personnel by biting, scratching, spitting, or transferring blood or other bodily fluids on, upon, or through the skin or membranes of the peace officer, firefighter, or emergency medical personnel. The test result must be reported to the accused, each peace officer, firefighter, or emergency medical personnel named in the petition for the test, their employing entities, and if the accused is in custody, the officer in charge and the chief medical officer of the detention facility. Health and Safety Code Section 121065 forbids use of the test results as evidence in any criminal proceeding and requires that all recipients of the results other than the accused maintain the confidentiality of the accused's identity. An exception is made for disclosures that may be necessary to obtain medical or psychological care or advice.

### **OTHER CRIMES**

Penal Code Section 1524.1 allows court-ordered HIV testing of any person charged with a crime, at the request of the crime victim. Before issuing a search warrant for the defendant's blood, the court must find that there is probable cause to believe that blood, semen, or other bodily fluids have been transferred from the defendant to the victim and that there is probable cause to believe the defendant committed the alleged offense. A victim may also request HIV testing of the accused in the case of certain alleged sex crimes that are the subject of a police report but have not been charged. This provision applies only if the accused has been charged with some separate sex crime, there is probable cause to believe that the accused committed the uncharged offense, and there is probable cause to believe that blood, semen, or certain other bodily fluids could have been transferred from the accused to the victim.

The prosecutor must advise the victim of the right to request testing and must refer the victim to the local health officer for help in determining whether to make such a request. The local health officer is also responsible for disclosing the test results to the victim and the accused and must offer appropriate counseling to each. The prosecutor may not use the test result to determine whether to file a criminal charge.

### **INDIVIDUALS IN CUSTODY**

Penal Code Sections 7510-7519 establish procedures through which custodial and law enforcement personnel are required to report situations in which they have reason to believe they have come into contact with bodily fluids of an inmate, a person arrested or taken into custody, or a person on probation or parole, in a manner that could result in HIV infection. These reports must be filed with the chief medical officer of the applicable custodial facility. The employee may also request HIV testing of the person who is the subject of the report. The chief medical officer shall order a test only if there is a significant risk that HIV was transmitted.

These sections also permit inmates to file similar requests stemming from contacts with other inmates. In addition, the chief medical officer may order an HIV test in the absence of any incident report or request from an inmate or employee if the medical officer concludes an inmate exhibits clinical symptoms of HIV infection or AIDS. Further, custodial officers or correctional staff may file a report of any observed or reported behavior known to cause the transmission of HIV. The chief medical officer may investigate these reports and require HIV testing of any inmate as deemed necessary as a result of the investigation. Penal Code Section 7540 makes it a misdemeanor to file a false report or request for testing or to use or disclose test results or confidential information in violation of any of the provisions of Section 7500-7555.

California Code of Regulations, Title 22, Sections 41100-41150 interpret the procedural aspects of Penal Code Sections 7510-7519.

Penal Code Section 7553 permits the DHS to conduct periodic anonymous unlinked serologic surveys of all or portions of the inmate population or persons under custody within a city or county.

Health and Safety Code Section 121070 establishes a separate procedure for testing persons in custody. It requires that any medical personnel working in any state, county, or city prison, jail, or other detention facility who receives information that an inmate has been exposed to or is infected with HIV or has an AIDS-related condition must report that information to the officer in charge of the detention facility. The officer in charge must notify all employees, medical personnel, contract personnel, and volunteers at the facility who have or may have direct contact with the inmate or the inmate's bodily fluids. All those receiving this information must maintain the confidentiality of any personally-identifying data and any willful unauthorized disclosure is punishable as a misdemeanor.

## **WARDS OF THE YOUTH AUTHORITY**

Welfare and Institutions Code Section 1768.9 requires a person under the jurisdiction of the Department of the Youth Authority to submit to an HIV test if the chief medical officer of the facility determines the person exhibits clinical symptoms of AIDS. A court order may be sought if the person refuses testing. The test subject must receive appropriate counseling and the test results. The chief medical officer may disclose the test results to the facility superintendent or administrators and, if the test results are positive, to the test subject's known sexual or needle sharing partners within the facility. Health and Safety Code Section 120995 exempts the Youth Authority from obtaining the test subject's written consent.

## **PAROLEES AND PROBATIONERS**

Penal Code Section 7520 requires correctional officials to notify parole and probation officers when an individual with HIV infection or AIDS is released. The parole or probation officer must then ensure that the parolee or probationer contacts the county health department or a physician or surgeon for information on counseling and treatment options available in the county of release.

Penal Code Section 7521 requires that if the HIV-infected individual has not informed his or her spouse of his or her condition, the parole or probation officer may ensure that the spouse is notified by the chief medical officer of the correctional institution or the physician or surgeon treating the spouse or the parolee or probationer. If a parole or probation officer enlists the assistance of local law enforcement officers in taking into custody a parolee or probationer who is HIV infected or has AIDS and also has a record of assault on a peace officer, the parole or probation officer must inform the local law enforcement officers of the parolee's or probationer's condition.

Penal Code Section 7540 makes it a misdemeanor to use or disclose test results or confidential information obtained in violation of Penal Code Section 7520 or 7521.

Penal Code Section 7505 provides that Sections 7500-7550 shall be operative only in those cities and/or counties that adopt a resolution affirming that it shall be operative.

## **EXPOSING ANOTHER PERSON TO HIV**

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Health and Safety Code Section 120291 states that any person who exposes another to HIV by engaging in unprotected sexual activity is guilty of a felony, when the infected person: 1) knows he/she is infected; 2) has not disclosed his/her HIV-positive status; and 3) acts with the intent to infect the other person with HIV. The felony charge is punishable in the state prison for three, five, or eight years. Unless the victim requests otherwise, the name and any other identifying characteristics of the victim shall remain confidential.

Health and Safety Code Section 120292 denotes the parameters for disclosing identifying information and other records of the diagnosis, prognosis, testing, or treatment relating to HIV in a criminal investigation of a violation of Section 120291. Orders of the court shall not be based on the sexual orientation of the defendant, used to determine the HIV status of a crime victim, or intended to restrict or eliminate anonymous AIDS testing.

## **OCCUPATIONAL EXPOSURE TO HIV/AIDS**

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State law requires or allows certain individuals who may have been occupationally exposed to HIV to learn the infection status of the individual who was the source of the exposure. This section outlines the circumstances in which exposure notification requirements apply.

### **PRE-HOSPITAL EMERGENCY MEDICAL PERSONNEL**

Health and Safety Code Section 1797.188 and 1797.189 require county health officers to notify pre-hospital emergency medical care personnel, volunteer or paid, when they have been exposed to a reportable disease, such as AIDS, in the course of providing emergency services or rescues. The exposure must be one capable of transmitting the disease. The notification requirement applies only under specified circumstances in which the exposed personnel's names and phone numbers have been provided to the health facility or the chief medical examiner-coroner at the time the patient is transferred and that information is subsequently relayed to the county health officer. Further disclosures are prohibited except as otherwise authorized by law. Personnel to whom this statute applies include authorized registered nurses or mobile intensive care nurses, emergency medical technicians, paramedics, lifeguards, firefighters, peace officers, and physicians or surgeons who provide pre-hospital emergency medical care or rescue services.

### **FUNERAL DIRECTORS**

When an individual with AIDS dies in a health facility or the decedent's body has been in the possession of the chief medical examiner-coroner, Health and Safety Code Sections 1797.188 and 1797.189 require the health facility, the chief medical examiner-coroner, or the county health officer to notify the funeral director removing the body that the decedent had AIDS.

## **HEALTH CARE PROVIDERS, FIRST RESPONDERS, AND OTHERS WHO MAY BE OCCUPATIONALLY EXPOSED**

Health and Safety Code Sections 121130-121140 allow individuals who experience a significant exposure (capable of transmitting HIV) to the blood or other potentially infectious material of a patient, during the course of rendering health care-related, emergency response, or other occupationally-related services, to request information on the source patient's HIV status. If the source patient is already known to be HIV positive, the patient's attending physician may disclose this information to the exposed individual. The attending physician must first attempt to obtain the source patient's consent to release this information, but consent is not required.

If the source patient's HIV status is unknown, and the exposed individual tests HIV negative on a baseline test after exposure, the attending physician of the source patient shall make a good faith effort to locate and obtain the voluntary, written, informed consent of the source patient to test existing samples of blood or other tissue for HIV. If the source patient is located, he or she must be provided with medically appropriate pre-test counseling. If consent is given for testing, the source patient is to be referred for appropriate post-test counseling and follow-up, if necessary. The source patient who refuses to provide consent must be informed that the testing of the available blood or tissue sample will proceed without consent and that the test results will be provided to the exposed individual. The source patient may elect not to receive the results of the HIV test. As otherwise required by law, the exposed individual must maintain the confidentiality of the test results.

Section 121135 of the Health and Safety Code authorizes, under specified conditions, an HIV test on any available blood or patient sample of a source patient, if the source patient is unable to provide informed consent. The inability to contact the source patient, or legal representative of the source patient, after a good faith effort to do so shall constitute a refusal to consent, and HIV testing of available blood or tissue sample may be performed. If the source patient cannot be located after a good faith effort, or if the source patient refuses to give consent, then the available blood or tissue sample may be tested for HIV without consent. If the informed consent of the source patient cannot be obtained because the source patient is deceased, consent to perform an HIV test on any blood or patient sample of the source patient, legally obtained in the course of providing health care services at the time of the exposure event, shall be granted.

## **HIV-POSITIVE INDIVIDUALS AND MEDI-CAL**

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Numerous statutes mention HIV/AIDS and Medi-Cal (California's Medicaid program). The following specifically addresses drug-treatment services.

### **DRUG TREATMENT SERVICES**

Existing law provides for Medi-Cal to establish a program to provide drug treatments to qualified persons infected with HIV. Government Code Section 16531.1 created a continuously appropriated Medical Providers Interim Payment Fund to ensure uninterrupted delivery of health care services to Medi-Cal beneficiaries and critical drug treatments to persons infected with HIV during any portion of a fiscal year (prior to September 1) in which the state budget has not been signed.

## **HIV AND WORKERS' COMPENSATION**

### **RELEASE OF MEDICAL INFORMATION**

In 1999, Labor Code Section 3762 was amended, and Section 56.31 was added to the Civil Code relating to HIV and workers' compensation. With identified exceptions, these statutes prohibit the disclosure or use of medical information regarding the HIV status of an employee who has filed a workers' compensation claim without written authorization from the claimant. Exceptions include: 1) if the patient is an injured worker claiming to be infected with or exposed to HIV through an incident arising out of and in the course of employment; 2) if the diagnosis of the workers' compensation injury would affect the employer's premium; and 3) medical information that a treating medical provider deems is necessary for the employer to have in order to modify the employee's work duties.

### **DEATH BENEFITS**

Section 5406.6 was added to the Labor Code in 1999, and Section 5406 was amended, relating to the statute of limitations for collecting workers' compensation benefits for the death of a health care worker, public safety employee, or certain correction peace officers from an HIV-related disease. These statutes state that a proceeding to collect benefits must commence within one year from the date of the death, provided that certain events have occurred.

## **REPORTING OF AIDS CASES**

HIV infection in the absence of AIDS is currently not a reportable condition in California. However, AIDS diagnosed in accordance with Centers for Disease Control and Prevention guidelines has been a reportable disease in California since 1983. California Code of Regulations, Title 17, Section 2500, requires health care providers to report AIDS cases by name to the local health office.

Health and Safety Code Section 121025 protects the confidentiality of public health records relating to AIDS that were developed or acquired by state or local public health agencies. Any personally-identifying information in these records must remain confidential and cannot be disclosed without written authorization from the person named in the record or his or her guardian or conservator, except to other local state, or federal public health agencies or researchers who need the information to carry out their duties in the investigation, control or surveillance of disease. Any individuals to whom the information is disclosed are also required to keep the information confidential. No confidential public health record may be required to be disclosed in the context of any civil, criminal, or administrative proceeding.

## **HIV/AIDS AND THE BLOOD SUPPLY**

California law includes several statutes designed to ensure the safety of the blood supply. This section outlines those statutes.

### **HIV TESTING OF BLOOD DONORS**

Health and Safety Code Section 1603.1 requires that all blood and blood components to be used in humans be tested for HIV. Exceptions to the testing requirement are made for:

- blood/ blood components used for research or vaccination programs pursuant to an informed consent;
- blood products released for transfusion in emergency circumstances; and
- blood used for autologous purposes.



Blood banks and plasma centers must report the names and personal identifiers of HIV-positive donors to the DHS. Health and Safety Code Section 1603.3 requires that the donors of blood or blood components receive written notice, and sign a written statement confirming the notification, that their blood or blood components will be tested for HIV. The notice must also indicate that the names of donors found to be HIV-positive will be included on the Blood Donor Deferral Register, without listing the reason for deferral.

Health and Safety Code Section 1621.5 makes it a felony, punishable in prison for two, four, or six years, for any person who knows that he or she is infected with HIV to donate blood, breast milk, semen, body organs, or other tissues. Persons excluded include those who are mentally incompetent, who donate blood for the purpose of an autologous donation, and who self-defer their blood at a blood bank. In a criminal investigation for a violation of this section, the results of an HIV blood test may only be released pursuant to a search warrant, a judicial subpoena, or a court order.

### **TRANSFUSION-RELATED AIDS CASES**

Health and Safety Code Section 1603.1 requires physicians and hospitals to report immediately to the county health officer all transfusion-related AIDS cases. In addition, hospitals must report to the local health officer and the DHS, as soon as practicable, the names and other personal identifiers of all confirmed “AIDS carriers.” The county health officer must investigate the transfusion-associated AIDS cases and, if possible, trace the sources of the transfused blood. The local health officer may report the name of the HIV-infected blood donors to blood banks. Further, the local health officer must report the names of “AIDS carriers” to the DHS Donor Deferral Register, without identifying the reason for deferral.

Twice a month the DHS shall update the Donor Deferral Register, which shall include the names and other personal identifiers of all blood donors who test positive for HIV and all confirmed cases of AIDS. The DHS must provide this list to blood banks and plasma centers as a list of individuals who are indefinitely deferred from donating blood, without identifying the reasons for the deferral.

### **HIV/AIDS EDUCATION AND SCHOOLS**

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Section 51201.5 of the Education Code states that the school districts shall ensure that all pupils in grades 7 to 12, inclusive, receive AIDS prevention instruction from adequately trained instructors in appropriate courses, and provides guidance as to course content. Pupils are to receive instruction once in junior high or middle school, and once in high school. Section 51553 of the Education Code relating to sex education requires that all public elementary classes that teach sex education and discuss sexual intercourse emphasize that abstinence from sexual intercourse is the only protection that is 100% effective against pregnancy, sexually transmitted diseases, and AIDS when transmitted sexually. In 1999 this Section was amended to require that factual information in course materials and instruction be medically accurate.

Sections 51554 and 51555 of the Education Code prohibit pupils in kindergarten to 12<sup>th</sup> grade from receiving instruction on sexually transmitted diseases, AIDS, and human sexuality unless the parent/guardian has been notified at the beginning of the school year, or at the time of the pupil’s enrollment. If AIDS-related instruction is scheduled after these occurrences, written notification must be provided to the parent 10-15 days prior to instruction. If parents are not properly informed, or the parent sends a written request that the pupil be excused, the pupil shall not receive instruction, and shall not be punished for non-participation in such courses.

## **FACILITATING THE ADOPTION OF HIV POSITIVE CHILDREN**

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Welfare and Institution's Code Section 16135 facilitates the adoption of court dependent children who are HIV positive by establishing a program for special training and services to adoptive families. Participating counties shall provide training to adoptive parents that includes, but is not limited to, a curriculum of infant and early childhood development issues specific to caring for a child who tests HIV-positive, special medical needs and disabilities, and HIV/AIDS in children.

## **HIV/AIDS AND INSURANCE**

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Health and Safety Code Section 121025 protects the confidentiality of public health records related to persons with AIDS. This section also prohibits the use of such records to determine the insurability of any person. In addition, Health and Safety Code Section 120980 prohibits the use of the results of an HIV test for determination of insurability, except for life and disability insurance under certain conditions. Similarly, Insurance Code Section 799.09 prohibits a life or disability income insurer from requiring an HIV test if the results of the test would be used for determining eligibility for hospital, medical or surgical insurance coverage, or eligibility for coverage under a nonprofit hospital service plan or health care service plan. However, Insurance Code Sections 799-799.10 allow insurers to refuse to grant a life or disability income policy on the basis of a positive HIV test. An insurer that requires an HIV test for life or disability insurance must secure written, informed consent, pay for the test, and provide a list of available counseling resources. The insurer may not use an applicant's marital status, or known or suspected homosexuality or bisexuality, as a condition for determining whether to require an HIV test. If an insurer does require an HIV test, the insurer must disclose the test results to the applicant's designated physician or to the applicant.

Insurance Code Section 10291.5 requires that disability insurance policies that cover hospital, medical, or surgical expenses must include a prominent notice that California law prohibits requiring or using an HIV test as a condition of obtaining health insurance.

## **HIV/AIDS AND DISCRIMINATION**

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Federal and state statutes prohibit discrimination in employment, housing, and public accommodations against individuals with a disability, including persons with HIV infection.

### **FEDERAL LAW**

Discrimination against a person with a disability, including HIV infection, is prohibited in a variety of ways by federal law. The most recent and comprehensive federal legislation is the Americans with Disabilities Act of 1990 (ADA [42 U.S.C.§12101-12213]) which prohibits discrimination against disabled individuals in employment, public services, and public accommodations. Under the ADA, an individual is considered to be disabled if that person has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. Persons with clinical HIV disease or AIDS meet the definition of disabled. A split in opinion among courts elsewhere in the United States has begun to emerge regarding whether persons with asymptomatic HIV infection meet this definition. All employers with 15 or more employees must meet the requirements of the ADA. The ADA regulates when employers may inquire into an applicant's disability status and requires employers to keep employees' medical records separate from their personnel files. Employers must accommodate the needs of an otherwise qualified disabled employee in the performance of the essential functions of his or her job (reasonable accommodation). Similarly, the ADA requires all businesses and public services to reasonably accommodate the needs of otherwise qualified disabled persons in the provision of services.



## STATE LAW

California law incorporates the requirements of the federal ADA in a number of ways. It also establishes independent state grounds for prohibiting discrimination against disabled persons, including those with HIV infection.

Civil Code Sections 51 and 54 provide that a violation of applicable provisions of the federal ADA shall also constitute a violation of the California Civil Code.

Civil Code Section 51 et seq. (the Unruh Civil Rights Act) prohibit business establishments from discriminating against disabled persons. Civil Code Sections 54 et seq. protect disabled individuals from discrimination in the use of public accommodations including but not limited to medical and hospital facilities, public transportation, adoption agencies, private schools and hotels. They further guarantee equal access to housing accommodations offered for rent, lease or compensation.

Government Code Section 12900 et seq. (California Fair Employment and Housing Act) prohibit discrimination in employment or housing accommodations based on disability. Fair Employment and Housing Commission regulations (California Code of Regulations, Title 2, Section 7293.5 et seq.) establish that disabled persons include individuals with HIV infection or AIDS, or who are perceived as having AIDS. In addition, as noted previously, Health and Safety Code Section 120980 prohibits using the results of an HIV test for determining an individual's suitability for employment. Similarly, Health and Safety Code Section 121025 prohibits use of public health records pertaining to AIDS to determine employability. In addition, Civil Code Section 1710.2 provides that when transferring real property, owners or their agents need not disclose that an occupant had HIV.

## APPENDIX A

### California Code Sections and Regulations Specifically Mentioning HIV or AIDS

#### Business and Professions Code

<u>Section</u>	<u>Description</u>
32	AIDS education for health care professionals
1680	Dental professionals required to follow California Health and Safety Act of 1973 (CalOSHA) infection control standards, guidelines, and regulations
2221.1	Physicians, surgeons and podiatrists required to follow CalOSHA infection control standards, guidelines, and regulations
2660	Physical therapists required to follow CalOSHA infection control standards, guidelines, and regulations
2761	Nurses required to follow CalOSHA infection control standards, guidelines, and regulations
2878	Vocational nurses required to follow CalOSHA infection control standards, guidelines, and regulations
3527	Physicians' assistants required to follow CalOSHA infection control standards, guidelines, and regulations
3750	Respiratory therapists required to follow CalOSHA infection control standards, guidelines, and regulations
4521	Psychiatric technicians required to follow CalOSHA infection control standards, guidelines, and regulations
4955	Acupuncturists required to follow CalOSHA infection control standards, guidelines, and regulations
18712	HIV testing for licensing of professional boxers and martial arts fighters

#### Civil Code

<u>Section</u>	<u>Description</u>
56.31	Prohibition on disclosure or use of information regarding a patient's HIV status in a workers' compensation claim.
1710.2	Real property owners not obligated to disclose that previous occupants had AIDS

#### Education Code

<u>Section</u>	<u>Description</u>
51201.5	AIDS prevention education in schools
51229	Abstinence education in schools as a means to prevent AIDS
51229.8	In-service training for teachers and school employees who provide AIDS prevention instruction

## **Education Code** (continued)

<u>Section</u>	<u>Description</u>
51265	AIDS instruction for educators
51553 - 51555	AIDS instruction in school sex education classes

## **Family Code**

<u>Section</u>	<u>Description</u>
358	AIDS information for marriage license applicants

## **Government Code**

<u>Section</u>	<u>Description</u>
12900 et seq.	HIV/AIDS employment discrimination
16531.1	Fund to allow payment to Medi-Cal providers for HIV drug-treatment services when the state budget has not been signed

## **Health and Safety Code**

<u>Section</u>	<u>Description</u>
135 - 138	Office of Women's Health as a clearinghouse for information on women and AIDS
439.905	Research on effectiveness of RU-486 in treating AIDS
1250.4	HIV/AIDS testing and treatment for correctional inmates and Youth Authority wards
1250.11	Guidelines for preventing transmission of HIV in health care settings
1337.1	AIDS education programs in skilled nursing and intermediate care facilities
1389.1	Health insurance applications must state that an HIV test may not be required or used as a condition for obtaining health insurance
1562.5	HIV training for administrators of adult residential facilities and program directors of social rehabilitation facilities
1568.01 - 1568.092	Residential care facilities for persons with HIV/AIDS
1603.1 - 1603.4	HIV testing of donated blood and blood components; reporting of transfusion-related AIDS cases
1621.5	Donation of blood, breast milk, semen, body organs, or other tissues by persons knowingly infected with HIV/AIDS is a felony.
1644.5	HIV screening of donors of tissue for transplantation
1760 - 1761.8	Pediatric day health and respite care facilities for children with HIV
1797.175	AIDS training for pre-hospital (emergency medical) personnel
7155.5	HIV screening of anatomical gift donors

## **Health and Safety Code** (continued)

<u>Section</u>	<u>Description</u>
11362.5 - 11362.9	Use of marijuana by people with AIDS and the Marijuana Research Act of 1999
11757.59	AIDS testing and counseling services for alcohol and drug abusing pregnant and parenting women and their infants
11998 - 11998.3	State drug and alcohol abuse master plan to include AIDS information
11999 - 11999.3	State funded HIV/AIDS education and prevention outreach programs to intravenous drug users exempt from prohibitions on discussion of responsible but unlawful use of drugs or alcohol
38070 - 38081.1	Administrative provisions applicable to the CA AIDS Program (Section 120800 et seq.)
100117	Legislative findings and declarations regarding the AIDS pandemic
100119	Department of Health Services Office of AIDS designated as lead agency for coordinating state HIV/AIDS programs
100236	Advance payments to local health departments for specified services, including funding for HIV education and prevention
101300 - 101310	Local public health service contract options for AIDS programs
110403	Advertising of AIDS drugs
111605	Approvals for AIDS-related drugs
120290	Willful exposure of another person to any contagious, infectious, or communicable disease is a misdemeanor
120291	Acting with specific intent to infect another person with HIV is a felony; Victim identity protection
120292	Disclosure of identifying information, diagnosis, testing and treatment information relating to HIV in a criminal investigation for violation of Section 120291
120775	HIV and AIDS definitions
120800 - 120870	California AIDS Program
120800	Legislative intent
120805	Duties of Department of Health Services
120815	Funding of residential AIDS shelters
120820	Confidentiality of personal data
120825	Duties of Department of Health Services Director
120830	Pilot projects of care initiated through block grant program
120835	Private health insurance premiums of participants in pilot care projects
120840	AIDS mental health project
120845	Pilot programs in AIDS-related substance abuser programs
120850	AIDS research funding allocation for University of California

## **Health and Safety Code** (continued)

<u>Section</u>	<u>Description</u>
120855	Home and community-based services
120860	Prevention, education, testing, and counseling programs for women and children
120865	Review of programs; target populations; unmet and projected needs; report
120870	Alkyl nitrites sales
120875 - 120895	AIDS Information
120875	AIDS information for school districts
120880	AIDS information to employees of school districts
120885	Legislative declarations on testing for HIV antibodies separate from blood donation
120890	Designation of counties for alternative testing sites
120895	Provisions governing operation of alternative test sites; anonymity of testing
120900 - 120920	AIDS Early Intervention Projects
120925 - 120935	Provision of Azidothymidine (AZT)
120950 - 120968	HIV Treatment (AIDS Drug Assistance Program)
120975 - 121020	Mandated Blood Testing and Confidentiality to Protect Public Health
120975	Prohibition against identification of individuals testing for AIDS antibodies
120980	Unauthorized disclosures, penalties, damages, prohibited uses of results
120985	Disclosure of test results to health care providers
120990	Written consent of test subjects; exceptions
120995	Certain actions and testing exempted from confidentiality provisions
121000	Disclosure and consent in medical testing of prisoners
121005	Liability of state department, blood bank, or plasma center
121010	Disclosure to certain persons without written consent
121015	Disclosure to spouse, sexual partners, needle sharers, county health officer
121020	Consent for incompetent persons
121025 - 121035	AIDS Public Health Records Confidentiality Act
121050 - 121070	AIDS Public Safety and Testing Disclosure
121050	Purpose
121055	Disclosure in connection with certain sexual crimes
121060	Disclosure in connection with assaults on officers
121065	Guidelines for testing in connection with provisions of this chapter
121070	Disclosures in connection with custodial facilities
121075 - 121125	AIDS Research Confidentiality Act
121130 - 121140	AIDS Exposure Notification
121130	Legislative intent
121132	Definitions
121135	Guidelines for testing and disclosing in connection with exposures experienced by health care providers or first responders
121140	Liabilities and penalties

## **Health and Safety Code** (continued)

<u>Section</u>	<u>Description</u>
121150 - 121180	AIDS Research and Workshop Grants
121200 - 121225	AIDS Vaccine Research and Development Grant Program
121250 - 121280	AIDS Vaccine Development
121300 - 121335	AIDS Clinical Trial Grant Award for the Prevention of Maternal Transmission of HIV
121362	Confidentiality of HIV test results in connection with reports on tuberculosis patients
125107	Offering of HIV testing and counseling to pregnant women
129755	Seismic safety standards for federally owned facilities providing services to persons with HIV infection

## **Insurance Code**

<u>Section</u>	<u>Description</u>
790 - 790.10	Payment of AIDS-related insurance claims
799 - 799.10	Life and disability income insurance and AIDS risks
10291.5	Disability insurance applications to include notice of prohibition of HIV testing for health insurance

## **Labor Code**

<u>Section</u>	<u>Description</u>
5406 - 5406.6	Statute of limitations for collecting HIV-related workers' compensation death benefits for certain workers

## **Penal Code**

<u>Section</u>	<u>Description</u>
647f	Prostitution elevated to a felony for persons previously convicted of prostitution or other sex offenses and found to be HIV positive in connection with those convictions
1001.10 - 1001.11	AIDS education program in drug abuse and prostitution cases
1202.1, 1202.6	AIDS testing for persons convicted of sex offenses and prostitution
1463.23	County use of fines for certain offenses to provide AIDS education program for drug abuse and prostitution cases
1524.1	HIV testing of criminal defendants when there is probable cause to believe transmission of HIV from the defendant to the victim could have occurred
2692	Contracting for housing, care, and treatment of Department of Corrections inmates with HIV/AIDS
4018.1	HIV/AIDS information for county jail inmates sentenced for drug-related offenses

## **Penal Code** (continued)

<u>Section</u>	<u>Description</u>
5008.1	HIV/AIDS information for inmates of state correctional facilities
7500 - 7555	HIV testing of prisoners
7552	Education and prevention program for correctional, custodial, and law enforcement agencies
7553	Periodic anonymous serologic HIV surveys of county/city inmate populations
7554	Reporting of occupational exposure to HIV among peace officers
7555	Current HIV testing, reporting, and notification provisions for law enforcement personnel is extended from 1/1/2000 to 1/1/2005
11225 - 11235	Injunction, abatement, and prevention of bathhouses permitting conduct capable of transmitting AIDS
12022.85	Sentence enhancement for persons convicted of committing sex offenses while knowingly infected with HIV

## **Vehicle Code**

<u>Section</u>	<u>Description</u>
5071	Red ribbon special interest license plate funds will be used for AIDS research grants awarded by the University of California

## **Welfare and Institutions Code**

<u>Section</u>	<u>Description</u>
903.8	AIDS information for foster parents
1123	HIV/AIDS information for wards of the Youth Authority
1768.9	HIV testing of wards of the Youth Authority
5328	Disclosure to emergency response employees of information concerning possible exposure to HIV from contact with recipients of mental health services
14083.5	Hospital contracting and bidding procedures for treating Medi-Cal beneficiaries with AIDS
14088.85	Primary case management for Medi-Cal beneficiaries with HIV
14105.43 - 14105.435	Inclusion of HIV/AIDS-related drugs on Medi-Cal list of contract drugs
14132 - 14132aa	Home and community-based services and congregate living facilities for Medi-Cal beneficiaries with AIDS
14137.6	Treatment of Medi-Cal beneficiaries associated with investigational HIV/AIDS drugs
14148.9 - 14148.91	Reporting the numbers of HIV-infected infants born in certain high-risk target populations
14503.5	HIV/AIDS information for recipients of state-funded family planning services

## **Welfare and Institutions Code** (continued)

<u>Section</u>	<u>Description</u>
16135	Establishment of a program for special training and services to facilitate the adoption of HIV positive and other specified children
16525 - 16525.4	Services for HIV-positive children in foster care (demonstration project)
16800.5 - 16818	Audits of state-funded, county-operated AIDS programs
16915	County expenditure reporting of state funds for indigent health care for persons with AIDS

## **California Code of Regulations**

<u>Title &amp; Section</u>	<u>Description</u>
8:5193	Occupational exposure to blood or other potentially infectious material
9:7141 - 7143	Disclosure of HIV test results of Department of Rehabilitation applicants and clients
16:1633	HIV infection control requirements for osteopaths
17:1004	HIV reporting requirements for blood banks and plasma centers
17:1230	Approval of laboratories for use of HIV antibody test
17:2500 - 2511	Reporting requirements for AIDS cases
22:41102 - 41150	HIV testing of inmates in correctional facilities



## APPENDIX B

### Laws Passed in 1999 Relating to HIV/AIDS and Their Corresponding Codes and Sections

SENATE BILL (SB)	ASSEMBLY BILL (AB)	CODE AND SECTION
<b>SB 77</b> – Worker’s Compensation Death Benefits		<b>Labor Code</b> Adds: Section 5406.6 Amends: Section 5406
<b>SB 847</b> – Marijuana Research Act of 1999		<b>Health and Safety Code</b> Adds: Section 11362.9
	<b>*AB 136</b> – Needle Exchange Programs	<b>Health and Safety Code</b> Amends: Section 11364.7
	<b>*AB 155</b> – Medi-Cal Reform	<b>Welfare and Institutions Code</b> Adds: Section 14007.9 (Repeals January 1, 2006 unless extended)
	<b>AB 246</b> – Sex Education Instruction	<b>Education Code</b> Amends: Section 51553
	<b>AB 319</b> – County Programs, Funding <b>AB 435</b> – Worker’s Compensation Medical Record Disclosure	<b>Health and Safety Code</b> Adds: Section 100236 <b>Civil Code</b> Adds: Section 56.31 <b>Labor Code</b> Amends: Section 3762
	<b>AB 1047</b> – Drug Treatments	<b>Health and Safety Code</b> Adds: Sections 120966 and 120968
	<b>*AB 1670</b> – Discrimination	<b>Civil Code</b> Amends: Section 51.5 <b>Government Code</b> Adds: Section 12955 Amends: Sections 11139 12921, 12926, 12927, 12930, 12940, 12945, 12948, 12955, 12965, 12970, 12989.2, 12989.3

**\*Does not specifically mention “HIV” or “AIDS,” but may affect HIV-positive individuals.**

## **APPENDIX C**

### **Glossary of Selected Terms**

#### **Acquired Immunodeficiency Syndrome (AIDS)**

A disease of the immune system caused by HIV, and characterized by failure of the body's immune system to protect against infections and certain cancers. People with AIDS often suffer infections of the lungs, brain, eyes and other organs, and frequently suffer debilitating weight loss, and diarrhea.

#### **Autologous**

In blood donation, referring to a situation where the donor and the recipient are the same individual.

#### **California Codes**

California legislative statutes that are numbered and grouped into similar categories are called codes. For example, health issues are grouped together in the Health and Safety Codes, and Penal Codes are the body of statutes dealing with crimes and their punishment. The terms code and statute are often used interchangeably.

#### **Chaptered Bill**

A bill is chaptered by the Secretary of State after it has passed through both houses of the Legislature.

#### **Et Seq**

Abbreviation for et sequens (Latin) meaning, "and the following."

#### **Felony**

A serious crime, generally punishable by a penalty of imprisonment for more than one year.

#### **Human Immunodeficiency Virus (HIV)**

HIV is the virus that causes Acquired Immunodeficiency Syndrome (AIDS). California law distinguishes between simply being infected with HIV (testing positive) and having AIDS. Federal Centers for Disease Control and Prevention (CDC) criteria define when a person with HIV infection can be diagnosed as having AIDS.

#### **Misdemeanor**

A charge less serious than a felony, usually punishable by a fine, or imprisonment for less than one year.

#### **Regulations**

Regulations are enacted through an administrative process overseen by the Office of Administrative Law, an independent agency within the Executive Branch. Regulations may be needed to implement, interpret, or make specific a statute or code section. Regulations must be authorized by statute and they have the force of law. Collectively, California regulations form the California Code of Regulations.

#### **Statute**

A statute is a law that has been enacted by the legislature. Statutes that deal with related issues are numbered and grouped together into codes. California statutes are chaptered bills.